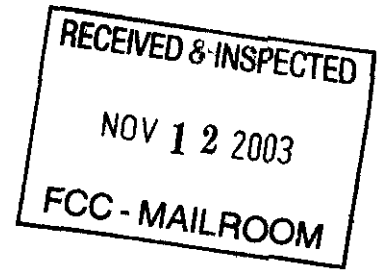


Before the
Federal Communications Commission
Washington, D.C. 20554



In the Matter of)
)
Section 68.4(a) of the Commission's Rules)
Governing Hearing Aid-Compatible) WT Docket No. 01-309
Telephones) RM-8658
)
)

Petition for Reconsideration

Public Service Cellular, Inc , Missouri RSA No. 7 Limited Partnership dba Mid-Missouri Cellular, Minnesota Southern Wireless Company dba HickoryTech, Northwest Missouri Cellular Limited Partnership, Illinois Valley Cellular RSA 2-I Limited Partnership, Illinois Valley Cellular RSA 2-II Limited Partnership and Illinois Valley Cellular RSA 2-III Limited Partnership ("TDMA Carriers"), by their attorneys, and the Rural Telecommunications Group ("RTG")¹, in accordance with Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, hereby seek limited reconsideration of the Report and Order ("*Order*") in the above-captioned proceeding, released August 14, 2003, imposing obligations on carriers and wireless handset manufacturers with respect

¹ RTG is an organized group of rural telecommunications providers who have joined together to speed the delivery of new, efficient, and innovative telecommunications technologies to the populations of remote and underserved sections of the country. RTG's members provide wireless telecommunications services such as cellular telephone service and Personal Communications Services ("PCS") to their subscribers. RTG's members are all affiliated with rural telephone companies or are small businesses serving secondary, tertiary, and rural markets

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to the offering of hearing aid compatible ("HAC") handsets for all air interfaces. In support of this petition, the following is respectfully shown

The TDMA Carriers and RTG members² each presently operate Commercial Mobile Radio Service ("CMRS") facilities using, *inter alia*, TDMA air interfaces. As a result of decisions announced by Cingular Wireless and AT&T Wireless approximately 30 months ago to migrate their networks away from TDMA to a GSM protocol, industry-wide support for the TDMA protocol has evaporated and, virtually all network manufacturers have abandoned their long-term support for the protocol. In addition, the TDMA Carriers and RTG members have experienced a dramatic drop-off in the development and availability of new TDMA handsets. As a result, the TDMA Carriers and RTG members are presently in various stages of planning and implementing the overbuilding of their existing TDMA networks with alternate digital air interfaces. While the overbuilt networks have either already begun providing service or are scheduled to do so well before the effective date of the new HAC rules, the TDMA Carriers and RTG members envision an ongoing need to continue operating the TDMA networks beyond the effective date for the HAC rules.³

² The majority of RTG members utilize TDMA air interfaces. For purposes of the factual discussion contained herein, references to "RTG members" are only to those RTG members who utilize TDMA air interfaces.

³ Virtually all of the TDMA Carriers' and RTG members' existing digital subscribers and a significant number of roamers continue to utilize the existing TDMA networks. The TDMA Carriers and RTG members are also clearing portions of their spectrum for GSM and CDMA technologies to accommodate not only their own digital overbuilds but also the digital migrations and expansions of the adjacent market co-channel licensees. Premature termination of the TDMA operations would result in all TDMA traffic being transferred to analog channels which would require more than three times the amount of spectrum required to continue supporting these handsets on TDMA.

The *Order* requires that most CMRS carriers make available at least two hearing aid compatible handsets for each digital air interface offered.⁴ The underlying basis for this requirement is that CMRS carriers are migrating away from analog technologies (which are HAC) and new and enhanced services are being offered for digital subscribers, thereby making the availability of HAC digital phones necessary.⁵ The Commission further reasons that since HAC handsets are presently available, the ability to meet these deadlines should not be unduly burdensome.⁶

RTG and the TDMA Carriers do not take issue with the purpose behind the *Order* nor do they believe that the sale of HAC handsets would be unduly burdensome, provided that HAC handsets are actually available, at the time when the rules take effect, for the TDMA air interface. Unfortunately, the requirement that carriers make HAC handsets available is *not* tied to the actual commercial availability of such handsets at the time

Review of the filings cited by the Commission for the proposition that TDMA handsets are presently available⁷ does not alleviate these concerns. In the cited Nokia filing, Nokia advised that

" Nokia reported that several of its phones achieved U3 and/or U3T ratings, as tested. However, as Nokia explained to FCC staff, due to certain problems with testing procedures we have identified with the current ANSI standard, *we cannot be confident that any results we have*

⁴ *Order* at ¶ 71

⁵ *Id.* at ¶ 21 and 35-37.

⁶ *Id.* at ¶ 56 and 71

⁷ Motorola January 31, 2003, *Ex Parte* at 14 and 16, and Nokia July 3, 2003, *Ex Parte* Letter (See *Order* at Footnotes 127 and 193)

obtained are reliable indicators of our products' true performance "
(emphasis added).

Similarly, while the Motorola *Ex Parte* provides results from subjective testing of certain handsets,⁸ the conclusion of that subjective report is that nearly 70% of the hearing aid users testing those phones found the current digital handsets meeting U3 to be "annoying" or "very annoying"⁹ Indeed, Motorola's overall conclusion appears to be that a U-level score of less than or equal to 3 for digital handsets (the requirement under the new HAC rules) was "not usable together" with a hearing aid device.¹⁰

There clearly remains a good faith question as to the ability of the current handsets to actually meet the U3 standard and, if they do, whether they will be commercially acceptable to hearing aid users. With the abandonment of the TDMA air interface, RTG and the TDMA Carriers are concerned that neither new handsets nor enhancements to existing models will actually be developed for that air interface. Accordingly, placing a *requirement* on the carrier without coupling that requirement to the commercial availability of conforming HAC handsets, places an impossible burden on the carriers if those handsets are not actually available. The only available option for a TDMA Carrier if that occurs under the new HAC rules would be to cease operating the TDMA air interface, an impractical solution from a spectral standpoint¹¹

⁸ The TDMA Carriers have reviewed the cited Motorola *Ex Parte* but have not been able to find where Motorola advised that the subjective testing reported on therein was actually done on commercially available Motorola handsets that met the HAC rules without additional "add-on" devices

⁹ Motorola *Ex Parte* at 16.

¹⁰ *Id.* at 3

¹¹ See footnote 1, *supra*.

Of course, actually terminating the TDMA operation would do nothing to further the goal of the rule which is to provide digital HAC handsets. With the TDMA network "turned off," existing users of TDMA service would find their phones reverting to the analog mode. All analog phones are HAC to begin with. Therefore, rather than serving to bring digital service to the hearing impaired, enforcement of that rule in the absence of commercially available handsets would merely force all TDMA subscribers back to the analog mode. RTG and the TDMA Carriers therefore submit that the Commission should tie its obligation that carriers offer HAC handsets to the commercial availability of such handsets for the offered air interface.

The Commission should also consider the situation where the TDMA carrier has overbuilt its system with an alternate digital technology. Where the carrier offers HAC handsets for the overbuilt digital technology, the availability of HAC handsets for the TDMA protocol is unnecessary to further the intent of the rules.

Most CMRS carriers, other than those in technology transition, operate a single digital air interface. Digital handsets designed for one technology will not operate on a digital system built for another technology. Therefore, in most situations a carrier will only be offering HAC handsets for a single air interface in any given market. Where a TDMA carrier is operating an alternate digital protocol in addition to the TDMA network which it is phasing out, and the TDMA carrier makes HAC handsets available for the new technology, the purpose of the rule would be satisfied without the need to offer HAC handsets to be offered for the TDMA air interface. Accordingly, RTG and the TDMA Carriers respectfully submit that where a carrier offers a compliant technology in addition to TDMA, the requirement for the sale of HAC handsets becomes superfluous for the

TDMA protocol and the sale of HAC handsets for the TDMA protocol should not be required as a pre-condition to the continued operation of the TDMA interface

The Commission should also consider that the situation will also arise where the carrier, having overbuilt its TDMA digital network, is no longer offering *any* new subscribers TDMA handsets. Indeed, most likely only a very limited number and/or models of TDMA handsets will remain commercially available for the TDMA air interface by the time the HAC rules take affect. Forcing the cessation of TDMA service in those circumstances would again be unduly burdensome without resulting in any furtherance of the purpose underlying the rule. The Commission has already recognized a *de minimis* exception where a carrier sells only a limited number of handset models. RTG and the TDMA Carriers submit that that exemption should be applied on a “per air interface” basis in the case where the carrier is offering a digital technology for which it complies with HAC rules. In other words, where a carrier is offering HAC handsets for one digital air interface and offers only a limited number of handsets for its TDMA air interface, the *de minimis* exemption should apply to that carrier with respect to the TDMA air interface alone

TDMA carriers made their initial technology decisions based upon the technology selection of their major roaming partners. Those large nationwide operators, without advance notice to the rural carriers, elected to abandon the TDMA technology. As a result, these carriers have found themselves facing substantial costs to overbuild their networks with new digital protocols. Moreover, in the past where handset sale deadlines were not tied to the actual availability of compatible handsets, the Commission has found itself facing a multitude of requests for waiver of those rules. The timeliest example is in

the E911 context. In order to utilize the more accurate handset-based technologies in rural areas, rural CMRS carriers had to begin selling compatible handsets by September 1, 2003. However, for GSM carriers such handsets were not commercially available by that deadline. For TDMA carriers, they were not only unavailable by that deadline but, apparently, will never be available. Even where a TDMA carrier is in the process of overbuilding its network with a digital technology for which such handsets are available, the TDMA carrier could not begin selling compatible handsets by the deadline because the compatible handsets would not work with the TDMA network that was operating in the interim. Yet, the rules for requiring the commencement of sale of automatic location identifying ("ALI") handsets were neither tied to the availability of such handsets for a given air interface nor the time when the carrier network could begin supporting such ALI handsets for an alternate technology. Accordingly, the Commission has been deluged with a flood of waiver requests based on the unavailability of such handsets. Grant of the instant petition will help the Commission avoid a similar occurrence in the HAC context.

RTG and the TDMA Carriers submit that in the HAC situation, with requirements that are scheduled to take effect two years from now, that the ongoing availability of TDMA handsets may well become even more of an issue. While RTG and the TDMA Carriers acknowledge that there will come a time when their TDMA networks will be turned down, they respectfully submit that hastening that date does nothing to further the intent of the HAC rules, especially where the carrier might already be offering an alternative digital service with HAC handsets. That being the case, RTG and the TDMA

Carriers submit that strict compliance with the HAC rules, in the absence of commercially available compliant handsets, would be unduly burdensome.

In light of the foregoing, RTG and the TDMA Carriers respectfully urge the Commission to reconsider the HAC rules with respect to carrier obligations and tie those carrier obligations to the actual availability of HAC handsets. If compliant handsets are available, then they will be sold. If they are not available, holding the carrier in violation of the rules (for not selling a product which does not exist) would appear to be wholly misdirected and would serve no purpose other than a punitive one directed against a party which simply has no control over the availability of the third party products required for compliance. Small rural carriers, those most likely affected by rules such as these, are not in a position to influence vendor product development or ongoing support, a fact clearly demonstrated by the vendor decisions to abandon the TDMA protocol based solely on the decisions of the large nationwide TDMA carriers to migrate away from TDMA

As an alternative, where a carrier operating a TDMA network has overbuilt an alternate digital technology for which HAC handsets are available, there does not appear to be a need to offer TDMA HAC handsets in order to further the purpose underlying the rule. The Commission should consider exempting TDMA networks entirely under this

circumstance or apply the *de minimis* exemption on a technology-specific basis for such carriers

Respectfully submitted,

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Dated: October 16, 2003

CERTIFICATE OF SERVICE

I, Ruth E. Garavalia, a secretary with the law firm of Kurtis & Associates, P.C., hereby certify that on this 16th day of October, 2003, a copy of the foregoing PETITION FOR RECONSIDERATION was served by First Class, U.S. Mail, postage pre-paid, to the following:

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